

## SENATE BILL NO. 502

INTRODUCED BY KEANE, MENDENHALL, GALLUS, KLOCK, GEBHARDT, WELBORN, MCCLAFFERTY,  
GILLAN, D. BROWN, P. NOONAN

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING AN ENVIRONMENTAL IMPACT OMBUDSMAN TO ACT  
AS A LIAISON AND ENSURE THAT ECONOMIC DEVELOPMENT AND ENVIRONMENTAL PROTECTION ARE  
ACHIEVED WITHIN STATUTORY TIMEFRAMES; CREATING A FEE TO PAY FOR THE SERVICES OF AN  
ENVIRONMENTAL IMPACT OMBUDSMAN; REQUIRING THE CHIEF BUSINESS DEVELOPMENT OFFICER  
TO CONTRACT FOR AND SUPERVISE THE ENVIRONMENTAL IMPACT OMBUDSMAN; ALLOWING FOR  
INCENTIVES AND PENALTIES FOR MEETING OR EXCEEDING TIMEFRAMES; ~~AND~~ AMENDING SECTIONS  
2-15-218, 2-15-219, AND 75-1-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Environmental impact ombudsman -- duties -- qualifications -- fees.**

(1) A person who applies to a state agency for a permit, license, or other authorization that the agency determines requires preparation of an environmental review, as defined in 75-1-220, may request the services of an environmental impact ombudsman.

(2) Upon a request pursuant to subsection (1) and subject to this section, the chief business development officer established under 2-15-218 shall contract for and supervise an environmental impact ombudsman.

(3) The chief business development officer shall maintain a list of individuals qualified pursuant to this section to be an environmental impact ombudsman.

(4) (a) The applicant may submit the names and qualifications of two individuals to the chief business development officer for consideration. The applicant's nominees do not need to be selected from the list maintained pursuant to subsection (3).

(b) The applicant and the chief development officer shall agree on the selection of an environmental impact ombudsman.

(c) The applicant and the chief development officer shall agree on the fee the applicant will pay for the services of the environmental impact ombudsman.

(5) The environmental impact ombudsman:

(a) shall act as a liaison between permit applicants and agencies in the preparation of environmental reviews to ensure that the reviews are done in an accurate, timely, and cost-effective manner; and

(b) shall perform any other duties necessary to ensure that economic development and environmental protection are achieved within statutory timeframes.

(6) The environmental impact ombudsman must possess the following qualifications:

(a) experience in the preparation of environmental impact statements;

(b) experience in natural resource topics;

(c) extensive knowledge of the Montana Environmental Policy Act;

(d) knowledge of disciplines required for contracting; and

(e) a demonstrated ability to complete work tasks in a timely and cost-effective manner.

**Section 2.** Section 2-15-218, MCA, is amended to read:

**"2-15-218. Office of economic development -- structure.** (1) There is an office of economic development within the office of the governor.

(2) The head of the office is the chief business development officer, who must be appointed by the governor.

(3) The office of economic development is composed of the following policy and program specialties:

(a) business retention and recruitment;

(b) workforce development;

(c) technology development;

(d) infrastructure improvement; and

(e) permitting and regulatory processes.

(4) The office may employ or contract with policy specialists to implement the programs listed in subsection (3) and the functions referred to in 2-15-219.

(5) The office may accept grants, loans, fees, and other gifts from sources other than the state for the purpose of administering the provisions of 2-15-219, [section 1], 90-1-112 through 90-1-114, and this section."

**Section 3.** Section 2-15-219, MCA, is amended to read:

**"2-15-219. Chief business development officer -- duties.** The chief business development officer

1 shall:

- 2 (1) advise the governor on policy issues related to economic development;  
3 (2) lead the state's business recruitment, retention, and expansion efforts;  
4 (3) coordinate the development and distribution of a statewide coordinated strategic economic  
5 development plan;  
6 (4) coordinate the individual functions and programs within the office as provided in 2-15-218; ~~and~~  
7 (5) contract for and supervise an environmental impact ombudsman pursuant to [section 1]; and  
8 ~~(5)(6)~~ serve as the state's primary liaison between federal, state, and local agencies, Montana tribal  
9 governments, private, nonprofit economic development organizations, and the private sector."

10

11 **Section 4.** Section 75-1-205, MCA, is amended to read:

12 **"75-1-205. Collection and use of fees and costs.** (1) A person who applies to a state agency for a  
13 permit, license, or other authorization that the agency determines requires preparation of an environmental impact  
14 statement is responsible for paying:

15 (a) the agency's costs of preparing the environmental impact statement and conducting the  
16 environmental impact statement process if the agency makes a written determination, based on material evidence  
17 identified in the determination, that there will be a significant environmental impact or a potential for a significant  
18 environmental impact. If a customer fiscal impact analysis is required under 69-2-216, the applicant shall also  
19 pay the staff and consultant costs incurred by the office of consumer counsel in preparing the analysis.

20 (b) a fee as provided in 75-1-202 if the agency does not make the determination provided for in  
21 subsection (1)(a); and

22 (c) a fee for the services of an environmental impact ombudsman if requested pursuant to [section 1].

23 (2) Costs payable under subsection (1) include:

24 (a) the costs of generating, gathering, and compiling data and information that is not available from the  
25 applicant to prepare the draft environmental impact statement, any supplemental draft environmental impact  
26 statement, and the final environmental impact statement;

27 (b) the costs of writing, reviewing, editing, printing, and distributing a reasonable number of copies of the  
28 draft environmental impact statement;

29 (c) the costs of attending meetings and hearings on the environmental impact statement, including  
30 meetings and hearings held to determine the scope of the environmental impact statement; and

(d) the costs of preparing, printing, and distributing a reasonable number of copies of any supplemental draft environmental impact statement and the final environmental impact statement, including the cost of reviewing and preparing responses to public comment.

(3) Costs payable under subsection (1) include:

(a) payments to contractors hired to work on the environmental impact statement;

(b) salaries and expenses of an agency employee who is designated as the agency's coordinator for preparation of the environmental impact statement for time spent performing the activities described in subsection (2) or for managing those activities; and

(c) travel and per diem expenses for other agency personnel for attendance at meetings and hearings on the environmental impact statement.

(4) (a) Whenever the agency makes the determination in subsection (1)(a), it shall notify the applicant of the cost of conducting the process to determine the scope of the environmental impact statement. The applicant shall pay that cost, and the agency shall then conduct the scoping process. The timeframe in 75-1-208(4)(a)(i) and any statutory timeframe for a decision on the application are tolled until the applicant pays the cost of the scoping process.

(b) If the agency decides to hire a third-party contractor to prepare the environmental impact statement, the agency shall prepare a list of no fewer than four contractors acceptable to the agency and shall provide the applicant with a copy of the list. If fewer than four acceptable contractors are available, the agency shall include all acceptable contractors on the list. The applicant shall provide the agency with a list of at least 50% of the contractors from the agency's list. The agency shall select its contractor from the list provided by the applicant.

(c) Upon completion of the scoping process and subject to subsection (1)(d), the agency and the applicant shall negotiate an agreement for the preparation of the environmental impact statement. The agreement must provide that:

(i) the applicant shall pay the cost of the environmental impact statement as determined by the agency after consultation with the applicant. In determining the cost, the agency shall identify and consult with the applicant regarding the data and information that must be gathered and studies that must be conducted.

(ii) the agency shall prepare the environmental impact statement within a reasonable time determined by the agency after consultation with the applicant and set out in the agreement. This timeframe supersedes any timeframe in statute or rule. If the applicant and the agency cannot agree on a timeframe, the agency shall prepare the environmental impact statement within any timeframe provided by statute or rule. The applicant and

1 the agency may negotiate incentives for a third-party contractor that completes the environmental impact  
2 statement before the timeframe expires and may negotiate penalties for exceeding the timeframe.

3 (iii) the applicant shall make periodic advance payments to cover work to be performed;

4 (iv) the agency may order work on the environmental impact statement to stop if the applicant fails to  
5 make advance payment as required by the agreement. The time for preparation of the environmental impact  
6 statement is tolled for any period during which a stop-work order is in effect for failure to make advance payment.

7 (v) (A) if the agency determines that the actual cost of preparing the environmental impact statement will  
8 exceed the cost set out in the agreement or that more time is necessary to prepare the environmental impact  
9 statement, the agency shall submit proposed modifications to the agreement to the applicant;

10 (B) if the applicant does not agree to an extension of the time for preparation of the environmental impact  
11 statement, the agency may initiate the informal review process under subsection (4)(d). Upon completion of the  
12 informal review process, the agreement may be amended only with the consent of the applicant.

13 (C) if the applicant does not agree with the increased costs proposed by the agency, the applicant may  
14 refuse to agree to the modification and may also provide the agency with a written statement providing the reason  
15 that payment of the increased cost is not justified or, if applicable, the reason that a portion of the increased cost  
16 is not justified. The applicant may also request an informal review as provided in subsection (4)(d). If the applicant  
17 provides a written statement pursuant to this subsection (4)(c)(v)(C), the agreement must be amended to require  
18 the applicant to pay all undisputed increased cost and 75% of the disputed increased cost and to provide that the  
19 agency is responsible for 25% of the disputed increased cost. If the applicant does not provide the statement,  
20 the agreement must be amended to require the applicant to pay all increased costs.

21 (d) If the applicant does not agree with costs determined under subsection (4)(c)(i) or proposed under  
22 subsection (4)(c)(v), the applicant may initiate the informal review process pursuant to 75-1-208(3). If the  
23 applicant does not agree to a time extension proposed by the agency under subsection (4)(c)(v), the agency may  
24 initiate an informal review by an appropriate board under 75-1-208(3). The period of time for completion of the  
25 environmental impact statement provided in the agreement is tolled from the date of submission of a request for  
26 a review by the appropriate board until the date of completion of the review by the appropriate board. However,  
27 the agency shall continue to work on preparation of the environmental impact statement during this period if the  
28 applicant has advanced money to pay for this work.

29 (5) All fees and costs collected under this part must be deposited in the state special revenue fund as  
30 provided in 17-2-102. All fees and costs paid pursuant to this part must be used as provided in this part. Upon

1 completion of the necessary work, each agency shall make an accounting to the applicant of the funds expended  
2 and refund all unexpended funds without interest."

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4 NEW SECTION. Section 5. Codification instruction. [Section 1] is intended to be codified as an  
5 integral part of Title 75, chapter 1, part 2, and the provisions of Title 75, chapter 1, part 2, apply to [section 1].

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7 NEW SECTION. SECTION 6. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

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